

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KENNETH BIRT,	:
	:
Petitioner,	:
	: ORDER
– against –	: 22-CV-3084 (AMD)
	:
MICHAEL CAPRA,	:
	:
Respondent.	:
-----	X
ANN M. DONNELLY , United States District Judge:	

On May 31, 2022, the *pro se* petitioner, currently incarcerated at Sing Sing Correctional Facility, paid the filing fee to commence this action and filed a petition for a *writ of habeas corpus* pursuant to 28 U.S.C. § 2254. (ECF No. 3; ECF No. 5 at 1.) Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Court conducted an initial review of Mr. Birt’s petition and determined that his petition appears to be barred by the one-year statute of limitations under the Anti-Terrorism and Effective Death Penalty Act of 1996. 28 U.S.C. § 2244(d).

On August 5, 2022, the Court issued an order to show cause, directing the petitioner to submit an affirmation, within 60 days of the entry of the order, explaining why his petition should not be dismissed as time barred. (ECF No. 6.)¹ The petitioner has not responded to the Court’s order. Accordingly, the petition for a writ of habeas corpus is dismissed without prejudice as time barred. *See* 28 U.S.C. § 2244(d). A certificate of appealability will not issue as the petitioner has not made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal

¹ The August 5, 2022 order was mailed to the petitioner at the address that he provided at Sing Sing Correctional Facility.

from this order would not be taken in good faith. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY

United States District Judge

Dated: Brooklyn, New York
October 19, 2022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____X

KENNETH BIRT,

Petitioner,

-against-

MICHAEL CAPRA,

Respondent.

_____X

PETITIONER'S
AFFIRMATION
22-CV-3084 (AMD)

STATE OF _____ }
COUNTY OF _____ } SS:

Kenneth Birt makes the following affirmation under the penalty of perjury:

I am the petitioner in this action, and I respectfully submit this affirmation in response to the
Court's Order dated _____. The instant petition should not be dismissed as time barred
because

[YOU MAY ATTACH ADDITIONAL PAGES, IF NECESSARY]

In view of the foregoing, it is respectfully submitted that the instant petition should be permitted to proceed.

DATED: _____

Signature

Address

City, State & Zip Code